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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,346	02/06/2004	Abram Arnold Ellison		5050
7590	09/09/2005		EXAMINER	
Abram Ellison 19925 Lauder Detroit, MI 48235			COMAS, YAHVEH	
			ART UNIT	PAPER NUMBER
			2834	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/772,346	ELLISON, ABRAM AMOLD
	Examiner	Art Unit
	Yahveh Comas	2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 June 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 6/28/2005 have been fully considered but they are not persuasive for the following reasons:

Applicant argument regarding the Oath/Declaration is not persuasive because applicants claim the benefit under 35 U.S.C. 120 but no Parent Application or PCT Parent Number is provided. Therefore the objection is sustained.

Applicant argument regarding an error in the office action because the invention does produce the results claimed by the application as stated in Patent 6,664,475 is not persuasive because said patent never claim perpetual motion and also even when both application are related at least two independent and distinct inventions are claimed in each application, making it application different from each other and requiring a different search and classification. Therefore even when the application are related the allowance of now patent 6,664,475 is not evidence for the allowance of application 10/772346.

Applicant arguments regarding rejection under 35 U.S.C. 101 wherein the batteries, motor and generator does not produce a close loop is not persuasive because as show in fig. 1 a connection between the motor - generator, generator - batteries and batteries –motor provide a close loop. Actually is the connection between the batteries and the motor the one that close the loop, providing a perpetual motion machine. A rejection on the ground of lack of utility includes the more specific grounds of inoperativeness, involving **perpetual motion**, frivolous, fraudulent, and against public

policy. The statutory basis for this rejection is 35 U.S.C. 101. An invention that is "inoperative" (i.e., it does not operate to produce the results claimed by the patent applicant) is not a "useful" invention in the meaning of the patent law. See, e.g., Newman v. Quigg, 877 F.2d 1575, 1581, 11 USPQ2d 1340, 1345 (Fed. Cir. 1989); In re Harwood, 390 F.2d 985, 989, 156 USPQ 673, 676 (CCPA 1968) ("An inoperative invention, of course, does not satisfy the requirement of 35 U.S.C. 101 that an invention be useful."). As disclose in the last office action the connection of the motor, generator and batteries in a close loop does not work as a perpetual motion because of the energy losses (for example heat and friction). Therefore no perpetual motion can be provided by this system since energy can not be created or destroyed and also energy has quality as well quantity, and the actual process occurs in the direction of decreasing quality of said energy.

Applicant arguments regarding rejection under 35 U.S.C. 112 that the batteries provide perpetual motion by recharging themselves without being recharged by any outside source is not persuasive since, as disclose above, energy can not be created or destroyed and even when the generator try to recharge the batteries the energy losses increase continuously as time goes by in such way that the energy provided by the generator will not be enough to recharge the batteries and run the motor.

Applicant arguments regarding objection under 37 CFR 1.75(c) requesting that the examiner amend the claims for this application pursuant to MPEP Section 707.07(j) is not persuasive because this section applied when it becomes apparent to the

examiner that there is patentable subject matter disclosed in the application. MPEP Section 707.07(j) read as follows:

707.07(j) [R-2] State When Claims Are Allowable

INVENTOR FILED APPLICATIONS

When, during the examination of a pro se application it becomes apparent to the examiner that there is patentable subject matter disclosed in the application, the examiner should draft one or more claims for the applicant and indicate in his or her action that such claims would be allowed if incorporated in the application by amendment. This practice will expedite prosecution and offer a service to individual inventors not represented by a registered patent attorney or agent. Although this practice may be desirable and is permissible in any case deemed appropriate by the examiner, it will be expected to be applied in all cases where it is apparent that the applicant is unfamiliar with the proper preparation and prosecution of patent applications.

In response to applicant's argument regarding claims 2-4 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., used as part of a Perpetual motion energy) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02. The oath of declaration is defective because applicant claims the benefit under 35 U.S.C. 120 but no Parent Application or PCT Parent Number is provided.

Also applicant is advised that the application is entitled to claims the benefits under 35 U.S.C 120 if the application for patent for an invention disclosed in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States, or as provided by section 363 of this title, which is filed by an inventor or inventors named in the previously filed application shall have the same effect, as to such invention, as though filed on the date of the prior application, **if filed before the patenting or abandonment of or termination of proceedings on the first application or on an application similarly entitled to the benefit of the filing date of the first application and if it contains or is amended to contain a specific reference to the earlier filed application.** No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a

surcharge, to accept an unintentionally delayed submission of an amendment under this section.

(Amended Nov. 14, 1975, Public Law 94-131, sec. 9, 89 Stat. 691; Nov. 8, 1984, Public Law 98-622, sec. 104(b), 98 Stat. 3385; Nov. 29, 1999, Public Law 106-113, sec. 1000(a)(9), 113 Stat. 1501A-563 (S. 1948 sec. 4503(b)(1)).)

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1, 5-10 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. The invention is inoperative because does not operate to produce the results claimed by the patent application such as the perpetual motion. The connection between the batteries, motor and generator produce a close loop. The batteries provide energy to move the motor, however some of the energy provided by the batteries will change into heat, decreasing the total energy provided by the batteries. The residual energy that get to the motor provide the energy to start said motor in order to move the generator, however friction is created decreasing even more the energy supply from the batteries. The electric energy created by the generator, which is less than the one provided by the batteries, also decreases when is transmitted to the said batteries. Therefore no perpetual motion can be provided by this system since energy can not be created or destroyed and also energy has quality as well

quantity, and the actual process occurs in the direction of decreasing quality of said energy.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 and 5-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not disclose how the machine will provide perpetual motion.

Claim Objections

Claims 5-10 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims have not been further treated on the merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 2 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaul U.S. Patent No. 3609426.

Gaul disclose an electric motor (65) for providing power and rotating an electric generator (11). The batteries are inherently connected to the electric motor for transmitting electric current.

2. Claim 4 is rejected under 35 U.S.C. 102(b) as being anticipated by Armfield U.S. Patent No. 4095665.

Armfield discloses a generator (20) for transmitting electric current to two or more batteries (22) to charge the batteries.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yahveh Comas whose telephone number is (571) 272-2020. The examiner can normally be reached on 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren Schuberg can be reached on 571-272-2044. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YC

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